

PRINCIPALS

The State of Tennessee; TennCare enrollees and their attorneys, George Barrett and Ted Carey; the Tennessee Hospital Association; the Hospital Alliance of Tennessee; and major individual stakeholders and providers including the Regional Medical Center at Memphis, Erlanger of Chattanooga, Nashville General Hospital at Meharry, Methodist Healthcare of Memphis, Baptist Memorial Health Care of Memphis, Saint Francis of Memphis, Wellmont Health Systems of Kingsport and the University of Tennessee Medical Group.

SUMMARY

The State has reached a tentative agreement with the above TennCare enrollee attorneys and stakeholders that would preserve health coverage for approximately 97,000 “medically needy” enrollees — the sickest and neediest who generally don’t qualify for Medicaid — in exchange for legal relief from the Grier Consent Decree. The agreement also would increase the current proposed four-prescription per month limit for enrollees to five prescriptions per month (three generic, two brand-name).

The tentative agreement is contingent on approval by U.S. District Court Judge John Nixon, the federal judge overseeing the Grier case, and on approval by the U.S. Centers for Medicare and Medicaid Services (CMS), the federal agency that oversees Medicaid programs. The agreement also is contingent on whether U.S. District Court Judge William J. Haynes, the federal judge overseeing another consent decree, issues rulings that undermine the financial stability of the TennCare program.

The State has worked since December to find a way to preserve coverage for as many Tennesseans as possible. In the end, the catalyst for the tentative agreement was the April 12 decision by the U.S. Sixth Circuit Court of Appeals, which cleared the path for the disenrollment of 323,000 people from TennCare. The ruling dispelled uncertainty surrounding the State’s ability to reduce enrollment, and prompted some enrollee attorneys and stakeholders to reach the agreement, which had been under discussion for months.

If approved, there would be an upfront cost to the tentative agreement. Maintaining health coverage for nearly one-third of the enrollees slated for disenrollment would require an estimated \$100 million — approximately \$75 million in one-time money and approximately \$25 million in recurring funds. However, negotiated changes in Grier would yield offsetting cost-savings in the future by restoring the State’s ability to control costs in TennCare and enabling it to put in place reasonable benefit limits in line with other states.

CONDITIONS

The tentative agreement hinges on federal court approval of changes in the Grier Consent Decree, which currently prevents the State from controlling costs in TennCare. Specifically, the agreement depends on the elimination of “a number of restrictions extending beyond the requirements of federal law” and the implementation of federally approved cost-control measures including:

- 1) A binding prior-authorization program for prescription drugs and a more extensive preferred drug list (PDL) that would allow the State to “deny any claim for reimbursement for a drug for which prior authorization is required but has not been obtained.” Currently, the State cannot enforce prior authorization.
- 2) The ability to deny claims — similar to private health plans — when benefit limits have been reached. A five-prescription per month limit would provide for three generic prescriptions as well as two brand-name prescriptions that would be subject to prior authorization under the PDL. The State would not pay for any prescription drug when comparable substitutes are available over-the-counter. Currently, the State cannot enforce limits on the quantity or type of service, including brand-name drugs.
- 3) Changes in the appeals process consistent with state and federal law, including elimination of provisions that place the burden of proof in an appeal on the State (in most states, the burden is on the enrollee) and require the State to pay for services such as prescription drugs until an appeal is exhausted (which generally takes longer than the course of treatment). The State still would be required to pay for a three-day supply of prescription drugs, in the event of an emergency.

The tentative agreement also calls for the Grier Consent Decree to terminate in July 2007 (at the same time the State’s current TennCare “waiver” with the federal government expires), unless the federal court determines there are “ongoing or imminently likely” violations of federal law.

NET RESULT

If the tentative agreement is approved by the federal court, TennCare enrollment cuts would be reduced to approximately 226,000 adults (children will not be affected). The remaining adult groups losing coverage would include:

- 121,000 uninsured adults (mostly healthy individuals who conceivably could obtain insurance elsewhere).
- 67,000 uninsurable adults (individuals who at one time could not obtain health insurance but now will be eligible to transfer coverage under federal HIPAA rules).
- 38,000 waiver dual eligibles (individuals who already are covered under the federal government’s Medicare program and who will receive prescription-drug benefits through Medicare on January 1).